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October 19, 2004

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

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OCT 19 2004

Federal Communications Commission
Office of Secretary

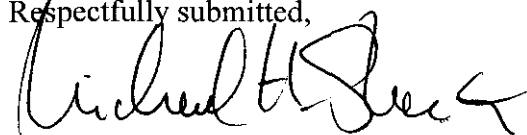
**Re: Reply Comments of East Kentucky Broadcasting Corp.
MB Docket No. 04-319
RM-10984
Channel 221C3, Coal Run, Kentucky**

Dear Ms. Dortch:

Transmitted herewith on behalf of East Kentucky Broadcasting Corp., are an original and four (4) copies of its Reply Comments submitted in connection with the above-referenced proceeding.

Should any questions arise in connection with this matter, kindly communicate directly with the undersigned.

Respectfully submitted,



Michael H. Shacter

Enclosure

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of)	
)	
Amendment of Section 73.202(b))	MB Docket No. 04-319
Table of Allotments,)	RM-10984
FM Broadcast Stations.)	
(Coal Run, Kentucky and Clinchco. Virginia))	

Federal Communications Commission
Office of Secretary

To: Chief, Allocations Branch

REPLY COMMENTS

East Kentucky Broadcasting Corp., ("East Kentucky"), licensee of WPKE-FM, Coal Run, Kentucky, by its attorneys and pursuant to the *Notice of Proposed Rule Making*, DA 04-2501, MB Docket No. 04-319, RM-10984, released August 12, 2004 ("NPRM"), hereby submits its Reply Comments in the above-referenced rule making proceeding.¹ In support thereof, the following is respectfully submitted:

Introduction

1. In its Comments submitted on October 4, 2004, Dickenson County Broadcasting Corp. ("DCBC") alleges that there is a major terrain obstruction between Coal Run, the community of license, and the hypothetical allocation reference site. In addition, DCBC maintains that East Kentucky's proposed tower at the hypothetical reference point would be abnormally high for a Class C3 broadcast facility.

2. In these Reply Comments, East Kentucky establishes that the DCBC allegations are incorrect. The accompanying Technical Report prepared by Charles M. Anderson and

¹ The NPRM established October 19, 2004 as the deadline for filing reply comments. Accordingly, the instant Reply Comments are timely filed.

Associates clearly demonstrates that, with a slight modification of the reference point, a) there is line of sight between the modified reference coordinates and Coal Run, b) any obstruction is not a “major obstruction” within the meaning of §73.315 of the Commission’s rules, and c) the proposed tower height is in line with other approved towers.

Reply Comments

3. East Kentucky could demonstrate near line of sight from the originally proposed reference coordinates by using a taller tower. As an alternative, however, in these Reply Comments, East Kentucky proposes an allocation reference point for channel 221C3 near the original reference point at 37-23-24 North Latitude and 82-29-14 West Longitude. An allocation study is included for this point as Exhibit E1 to the Technical Report. Exhibit E2 demonstrates 70 dBu coverage. This reference point will not affect the results of the noncommercial preclusion showing previously submitted.

4. Line of sight may be obtained to Coal Run from the replacement reference site using a 1000-foot tower (*See* Exhibits E3 and E4 to the Technical Report). A tower of this height is not unrealistic for a Class C3 allocation in a market the size of Coal Run-Pikeville. Towers of this height would be considered routine for Class C1 stations in similarly sized markets located in the West. Indeed, the Commission recently proposed a tower height of 500 to 600 feet for a Class A station to avoid an obstruction in a very small market.²

5. Moreover, even if a shorter tower were utilized at the alternative reference point proposed in these Reply Comments, the interruption to line of site would not be considered a “major obstruction” to Coal Run. It is significant that §73.315(b) contemplates that some obstruction may exist, but that “in no event should there be a *major* obstruction” to the path.

² *See Notice of Proposed Rule Making*, DA 04-2392, MB Docket No. 04-287, RM-11044, released July 30, 2004.

(Emphasis added). For example, in considering an allotment for Madison, IN, the Commission determined that an obstruction would not be deemed a *major* one where a 70 dBu signal would be delivered to the community of license despite the obstructions.³ In this case, any obstruction encountered with a shorter tower would be *de minimis*. The Technical Report points out that a 900-foot tower would result in an obstruction of only 15.2 meters, and an 800-foot tower would see only a 28-meter obstruction. In neither case could these obstructions be deemed to be major.

6. East Kentucky also urges the Audio Division to take into account that the proposed Channel 221C3 allocation and upgrade for WPKE-FM will provide a 60 dBu service of 4,803 square kilometers and a population of 154,333; representing a gain of 2,408 square kilometers and 68,113 population over its current facilities.

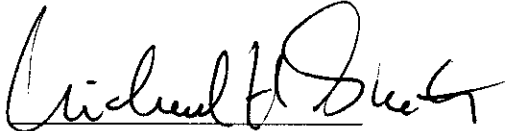
7. East Kentucky hereby reaffirms its present intention to apply for Channel 221C3 when allotted at the new coordinates and 1000-foot tower height, and when authorized, to promptly construct the modified facility and commence operations on Channel 221C3.

³ See *Report and Order*, DA 99-1222, MB Docket No. 98-105, RM-11044, released June 25, 1999.

WHEREFORE, for the reasons above, the proposal of East Kentucky Broadcasting Corp., as modified in these Reply Comments, should be adopted in its entirety.

Respectfully submitted,

East Kentucky Broadcasting Corp.

By: 

John F. Garziglia, Esq.

Michael H. Shacter, Esq.

Its Attorneys

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October 19, 2004

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TECHNICAL REPORT

This Technical Report is provided in support of *Reply Comments* by Eastern Kentucky Broadcasting Corporation (EKBC) in response to *Comments* filed by Dickenson County Broadcasting (DCB) regarding the proposed incompatible swap proposing the upgrade of station WPKE-FM, Coal Run, KY to channel 221C3 (MB Docket No. . In its comments, DCB asserts that the proposed 221C3 allocation point has a “major terrain obstruction” with respect to Coal Run , KY. DCB uses coordinates of N37-30-53 W 82-33-44 for Coal Run. In these *Reply Comments*, EKB uses the same reference coordinates.

EKB originally used a 30 second terrain database in the preparation of its allocation showings in accordance with routine Commission practice. DCB has used a combination of three second terrain database and 7.5 minute topographic maps in its showing. Although EKB could demonstrate near line of sight coverage from the original allocation point using a taller tower, and certainly the lack of a major obstruction, these reply comments are based on an alternate allocation reference point for channel 221C3 near the original reference point **N 37-23-24 W 82-29-14**. An allocation study is included for this point as E1 and a 70 dBu coverage exhibit as E2. This point will not impact the noncommercial preclusion showing previously submitted.

Line of sight may be obtained to Coal Run from this site with the use of a 1000 ft tower (see E3 and E4). Such a tower is not unrealistic for a C3 allocation in a market the size of Coal Run-Pikeville, and in fact would be considered routine for a class C1 in similar sized markets in the west. Furthermore, the Commission has recently accepted the

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use of a 500-600 ft tower for a class A allocation in a very small market (Booneville, KY MB Docket No. 04-287). Furthermore, a shorter tower could be utilized for Coal Run without encountering a "major obstruction" from this site. Section 73.315(b) contemplates that some obstruction may exist, but states that "...in no event shall there be a major obstruction." In Madison, IN (MB Docket No. 98-105) the Commission disregarded terrain obstruction observing that it was not a major obstruction and calculating that a 70 dBu would be obtained over the city despite obstructions. In this case, the obstruction for a shorter tower would be a small "knife edge". A 900 ft tower would result in an obstruction of only 15.2 meters, and an 800 ft tower would see a 28 meter obstruction. Neither would be sufficient to qualify as a "major obstruction".

It is concluded that the Coal Run 221C3 allocation can be made at the slightly modified reference point in accordance with Commission allocation policies.



Charles M. Anderson 10-18-2004
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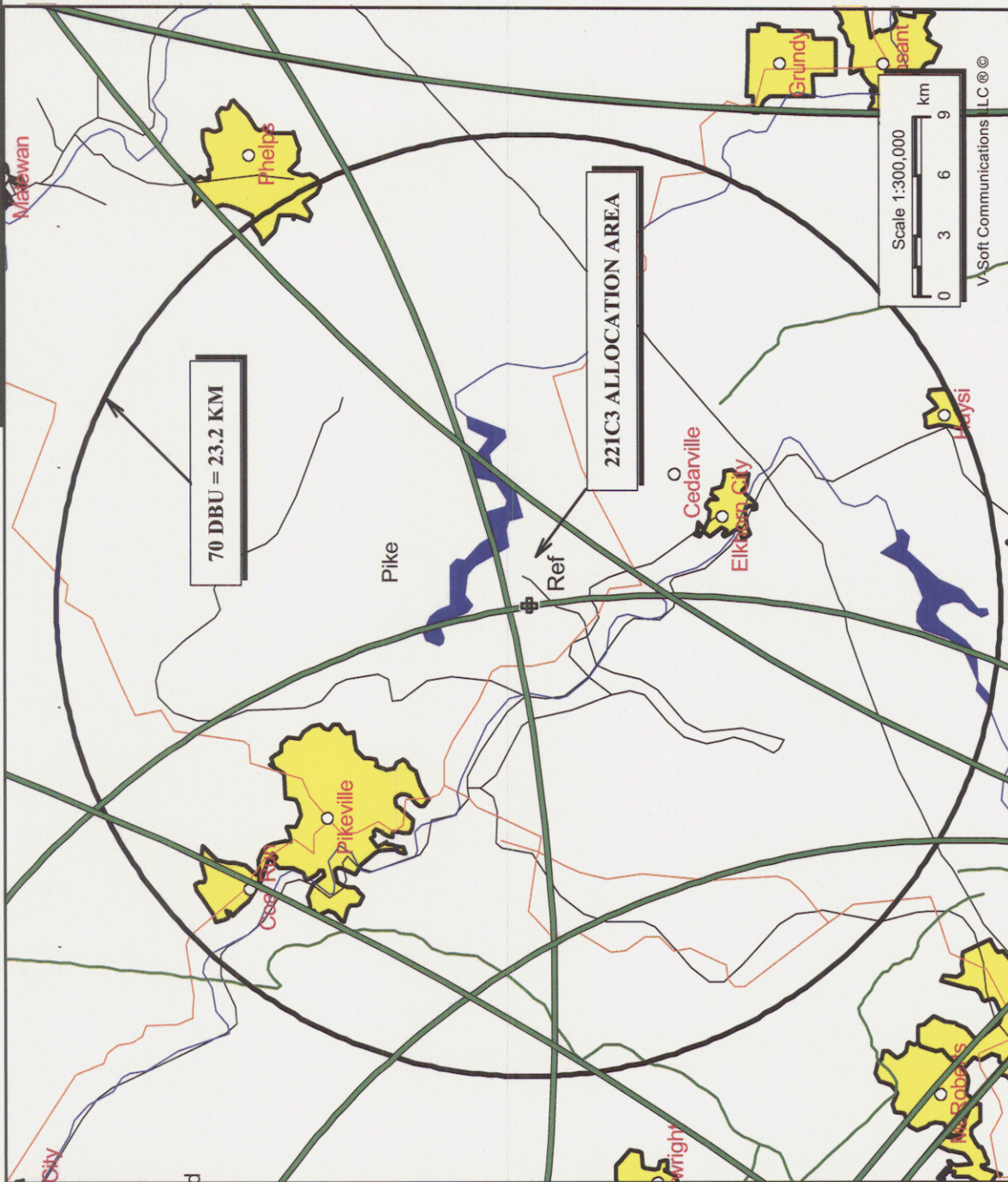
E1 COAL RUN

REFERENCE
37 23 24 N
82 24 04 W

CLASS = C3
Current Spacings
Channel 221 - 92.1 MHz

DISPLAY DATES
DATA 10-14-04
SEARCH 10-18-04

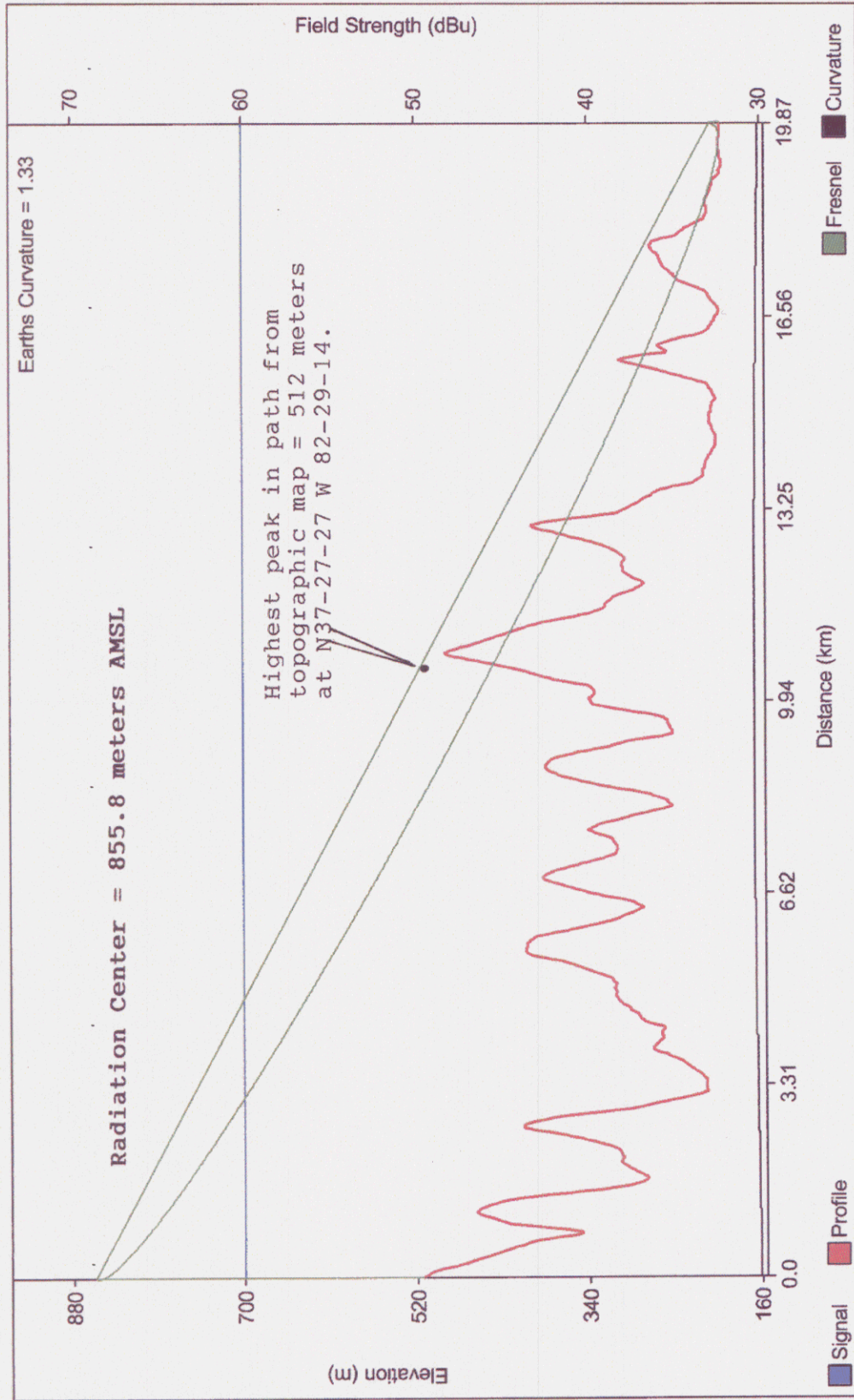
Call	Channel	Location	Dist	Azi	FCC	Margin
RADD	ADD 221C3	Coal Run	KY 1.15	27.9	152.5	-151.35
WDICFM	RSV 221C3	Clinchco	VA 4.32	133.3	152.5	-148.18
WDICFM	APP-Z 221C3	Clinchco	VA 27.20	177.8	152.5	-125.30
RDEL	DEL 221A	Clinchco	VA 27.20	177.8	141.5	-114.30
WDICFM	LIC 221A	Clinchco	VA 27.20	177.8	141.5	-114.30
WWJD	LIC 219C3	Pippa Passes	KY 42.52	261.0	42.5	0.02
WZAQ	LIC 222A	Louisa	KY 89.47	347.2	88.5	0.97
WVTR	LIC-D 220C2	Marion	VA 120.81	125.9	116.5	4.31
RADD	ADD 224A	Vicco	KY 57.10	248.2	41.5	15.60
WVBX	LIC-N 221C2	Carlisle	KY 194.79	297.8	176.5	18.29
WXLK	LIC-D 222C	Roanoke	VA 200.65	95.4	175.5	25.15
WXLK.C	CP -D 222C	Roanoke	VA 200.70	95.4	175.5	25.20
WMEJ	LIC 220A	Proctorville	OH 118.09	359.3	88.5	29.59
WUOT	LIC 220C	Knoxville	TN 206.19	222.2	175.5	30.69
WUOT.A	APP 220C	Knoxville	TN 208.00	222.3	175.5	32.50
WUOT.A	APP 220C	Knoxville	TN 208.00	222.3	175.5	32.50
WUOT	LIC 220C	Knoxville	TN 208.05	222.3	175.5	32.55
WHCB	LIC 218C1	Bristol	TN 108.70	167.3	75.5	33.20
WHCB.A	APP-D 218C1	Bristol	TN 108.70	167.3	75.5	33.20
WFHGFM	LIC 224A	Abingdon	VA 80.51	164.2	41.5	39.01
WYGE	LIC 222C3	London	KY 143.61	259.8	98.5	45.11
WYVK	LIC 221A	Middleport	OH 187.83	9.5	141.5	46.33
WMNCFM	LIC 221A	Morganton	NC 191.60	161.4	141.5	50.10
WPMW	LIC 224A	Mullens	WV 91.65	75.3	41.5	50.15
WZACFM	LIC 223A	Danville	WV 93.22	34.0	41.5	51.72
WSEH	LIC 274A	Cumberland	KY 68.78	220.2	11.5	57.28
WELCFM	LIC 275A	welch	WV 69.56	87.3	11.5	58.06
WVPB	LIC 219B	Beckley	WV 136.69	65.2	70.5	66.19
WRVCFM	LIC 224A	Catlettsburg	KY 120.80	351.9	41.5	79.30
960328	APP-D 218A	Hurricane	WV 121.89	16.0	41.5	80.39



E2 COAL RUN 221C3

Latitude: 37-23-24 N
Longitude: 082-24-04 W

COAL RUN LINE OF SIGHT (Plot based on 3 second terrain database - Peak from Topo Map)



Distance: 19.870313416 km
Bearing: 314.206 deg

Starting Latitude: 37-23-24 N
Starting Longitude: 082-24-04 W

End Latitude: 37-30-53 N
End Longitude: 082-33-44 W

Frequency = 92.1 MHz
Fresnel Zone: 0.6

Transmitter Elevation = 551 m
Receiver Elevation = 200.4 m

Transmitter Height (AG) = 304.8 m
Receiver Height (AG) = 9.1 m

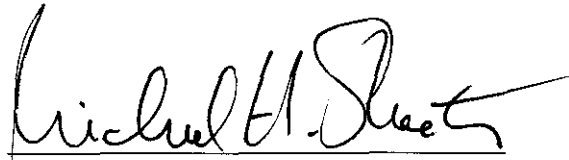


CERTIFICATE OF SERVICE

I, Michael H. Shacter, do hereby certify that true copies of the foregoing
“Counterproposal” were sent this 19th day of October, 2004 by U.S. first class mail, postage
prepaid, to the following:

Dickenson County Broadcasting Corp
Route 1, Box 412
Clintwood, Virginia 24228

Gary S. Smithwick, Esq.
Smithwick & Belendiuk
5028 Wisconsin Ave., Suite 301
Washington, D.C. 20016

A handwritten signature in black ink, reading "Michael H. Shacter", written over a horizontal line.

Michael H. Shacter